

GERALD S. OSTROWSKI
(ON RECONSIDERATION AFTER REMAND)

IBLA 78-531

Decided November 6, 1979

Appeal from the rejection of high bid tendered for a parcel of land offered at competitive sale of oil and gas leases. ES 16482.

Affirmed.

1. Oil and Gas Leases: Competitive Leases -- Rules of Practice:
Appeals: Burden of Proof

Under 43 CFR 3120.3-1, the United States reserves the right to reject all bids, but any rejection must be based on a record sufficient to establish that the rejection has a reasonable basis in fact.

2. Oil and Gas Leases: Generally -- Oil and Gas Leases: Competitive Leases

The U.S. Geological Survey is the Secretary's technical expert in matters concerning geologic evaluation of tracts of land offered at a sale of competitive oil and gas leases and the Secretary is entitled to rely on its reasoned analysis.

3. Appeals -- Contracts: Formation and Validity: Bid Award -- Oil and Gas Leases: Competitive Leases -- Oil and Gas Leases: Discretion to Lease

Under 43 CFR 3120.3-1, rejection of a high bid tendered at a sale of competitive oil and gas leases will be affirmed on appeal where the case file contains memoranda from the U.S. Geological Survey sufficient to establish that the rejection has a reasonable basis in fact.

APPEARANCES: Gerald S. Ostrowski, pro se.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Gerald S. Ostrowski appeals from the June 8, 1978, decision of the Eastern States Office of the Bureau of Land Management (BLM), rejecting his high bid for a tract of land submitted at a competitive oil and gas lease sale. The parcel, designated 9 (ES 16482) at the sale, lies in the Kisatchie National Forest, Bayou Middle Fork Field, sec. 18, T. 22 N., R. 5 W., Louisiana meridian, Claiborne Parish, Louisiana.

This case is before the Board for the second time. Appellant's \$8.10 per acre bid for parcel 9 was originally rejected as inadequate, based on the \$25 per acre minimum acceptable bonus bid established by the United States Geological Survey (USGS) before the sale. On appeal from this decision, Ostrowski cited engineering, geologic, and economic data to support his contention that his bid was adequate. In Gerald S. Ostrowski, 34 IBLA 254 (1978), the Board found the record insufficient to establish whether or not BLM's decision was arbitrary or capricious. Therefore, the Board set aside this first decision of the Eastern States Office and remanded it for compilation of an adequate record and reassessment of the sufficiency of the bids.

The second BLM Eastern States Office decision, from which this appeal was taken, reasserted the inadequacy of appellant's bid, in view of further information submitted by USGS. BLM quoted USGS as follows:

Mr. Gerald S. Ostrowski appears to have based his appeal on rather old development and completion history in the area. He does not mention the more recent Smackover development in this area. There were Smackover completions in secs. 8, 15, 17 and 18-22N-5W, and sec. 2-22N-6W, at the time of the October 13, 1976 lease sale. Also, there are more recent Smackover completions in secs. 13 and 16-22N-5W, and sec. 24-22N-6W, so the development is continuing. The Smackover oil completions in this area have rather high initial potentials, some ranging as high as 700 to 800 barrels of oil per day. The field appears to be developing both in an east and west direction.

Cities Service Oil Company completed the Meadors "B" No. 1 well, which is located 1,020 feet FNL and 900 feet FEL sec. 18-22N-5W (same section as Parcel 9) on August 29, 1975, in Smackover perforations 10,168 to 10,220 feet, for an initial flowing potential of 136 barrels of oil per day and 251 MCFGPD (through 14/64 inch choke) with 435 PSI tubing pressure.

We believe that the acceptance of Mr. Ostrowski's high bid of \$8.10 per acre would not be in the public interest. Our opinion is based on the Smackover development in this area, the Smackover completion in sec. 18, and the new and higher prices received for oil and gas. In conclusion, we find no grounds to alter our previous recommendation that Mr. Ostrowski's bid be rejected as inadequate.

Decision, pp. 1 and 2. BLM accepted this USGS recommendation and again rejected appellant's bid.

Appellant now contends that BLM did not comply with the Board's direction to compile an adequate record. He claims that the following instructions were ignored. "[Appellant's] statement of reasons for appeal should be transmitted to Survey for consideration at the time the record is compiled." Gerald S. Ostrowski, supra at 257, n.2. He claims BLM did not analyze and consider all available data, including dry wells in neighboring townships. Appellant particularly objects to the USGS use of drilling data derived after parcel 9 was offered for sale.

[1] The Department is without authority to issue oil and gas leases unless such leases are in the public interest. Duesing v. Udall, 350 F.2d 748 (1965); cert. denied, 383 U.S. 912 (1966). In particular, it is Departmental policy to seek the return of fair market value for the competitive oil and gas leases it administers. Coquina Oil Corp., 29 IBLA 310 (1977). The Department reserves the right to reject any or all bids in situations where it determines that it will not receive a fair return. Kerr McGee Corp., 6 IBLA 108 (1972), sustained, Kerr McGee Corp. v. Morton, 527 F.2d 838 (D.C. Cir. 1975); 43 CFR 3120.3-1. Thus, the Government is not obligated to accept a bid which represents only a fraction of the value of the tract. H & W Oil Co., Inc., 22 IBLA 313 (1975). On appeal, the record for any such rejection must be augmented sufficiently to establish that the rejection has a reasonable basis in fact. Ostrowski, supra.

[2, 3] The USGS is the Secretary's technical expert in matters concerning geologic evaluation, and the Secretary of the Interior is entitled to rely on its reasoned analysis. Arkla Exploration Co., 25 IBLA 220 (1976); Clear Creek Inn Corp., 7 IBLA 200, 213, 214, 79 I.D. 571, 578 (1972). The April 25, 1978, USGS memorandum, quoted in the second BLM decision, presented data derived both before and after parcel 9 was offered for sale. The Board in its 1978 decision instructed that BLM was to conduct a readjudication of the appropriateness of appellant's bid, based upon a completed record. Gerald S. Ostrowski, supra at 257. The additional data submitted by all parties was appropriately considered on readjudication. In light of the additional information submitted by USGS in its memorandum, we find BLM's

decision to reject appellant's bid is supported by the record. Frances J. Richmond, 29 IBLA 137, 140 (1977). The record was sufficient to establish that BLM's decision has a reasonable basis in fact.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision below is affirmed.

Joseph W. Goss
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Frederick Fishman
Administrative Judge

